



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: El Paso Builders, Inc.--Reconsideration

File: B-241509.2

Date: November 19, 1990

Antonio V. Silva, Esq., Silva & Herrera, P.C., for the protester.
Catherine M. Evans and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of dismissal of protest as untimely is denied; alleged lack of sufficient information about denial of agency-level protest does not excuse protester's failure to file protest at General Accounting Office within 10 days of notification of adverse agency action as required by Bid Protest Regulations.

DECISION

El Paso Builders, Inc. requests that we reconsider our dismissal of its protest of rejection of its bid under invitation for bids (IFB) No. GS-07P-90-HUC-0036, issued by the General Services Administration (GSA) for expansion of the Paso Del Norte border station. We dismissed El Paso's protest by notice dated October 12, 1990, because it was untimely filed.

We deny the request for reconsideration.

In its protest, which was filed on October 5, El Paso complained that GSA had improperly denied its agency-level protests against rejection of its bid, and that GSA had delayed unreasonably in responding to the protests, which were filed on May 16 and 22, and denied on August 31. We found the protest untimely because it was not filed within 10 days of September 4, the date El Paso was notified of the adverse agency action, as required by our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(3) (1990).

Under our Regulations, to obtain reconsideration the requesting party must show that our prior decision was based on errors of fact or law, or present information not

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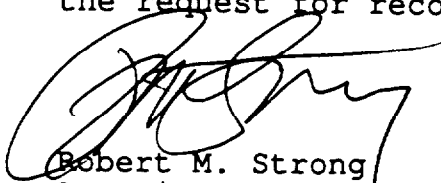
previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). El Paso has not met this standard.

In its request for reconsideration, El Paso asserts that it did not have the information it needed in order to file a timely protest in our Office because GSA failed to prepare a report on the agency-level protest. El Paso argues that the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(f) (1988), requires the agency to provide the protester with a copy of a report on the protest, and that the agency's failure to do so tolled our timeliness requirements.

El Paso's reliance on CICA is misplaced; the CICA requirement for an agency report on the protest applies to protests filed in our Office, not to agency-level protests; thus, GSA was not required to provide El Paso with a report responsive to its agency-level protest. Moreover, El Paso's claim that it lacked sufficient information to protest to our Office is untenable. El Paso knew of its basis for protest to our Office on September 4, when it learned that its agency-level protest had been denied; under our Regulations, El Paso had 10 days to protest that decision.

To the extent that El Paso believes that the agency's delay of over 3 months in responding to its initial protest excuses its failure to file a timely protest in our Office, we note that it is the protester's affirmative obligation to diligently pursue the information that forms the basis of its protest. Illumination Control Sys., B-237196, Dec. 12, 1989, 89-2 CPD ¶ 546. Thus, a protester may not delay filing a protest with our Office until it eventually receives a decision from the contracting agency. Rather, a protester may wait only a reasonable length of time for a contracting agency's response before filing a protest here. Sterling Env'tl. Servs., Inc., B-234798, May 12, 1989, 89-1 CPD ¶ 455. In this case, El Paso's 3-month wait for an agency response amounts to a failure to diligently pursue its protest, rather than a failure by the agency to expeditiously resolve the matter. Id.

As El Paso has not shown any error of fact or law or offered new information that would warrant reversal of our decision, the request for reconsideration is denied.


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Associate General Counsel